MOHAMED HANIF & ANOR. v. CHIN AH BAH

[O.C.J. (Chang Min Tat J.) December 7, 1973]
[Penang — Civil Suit No. 136 of 1973]

Practice and Procedure — Writ — Capacity of plaintiff — Running-down action.

In this action the plaintiffs describing themselves in the title to the writ as the administrators of the estate of the deceased victim of a motor accident, claimed general and special damages suffered by the estate of the deceased and by his dependants who were named in the indorsement. There was no description in the indorsement of the plaintiffs as such administrators, and there was no averment that the grant of letters of administration, if any, to the plaintiffs had been extracted.

Objection was taken to the writ after entry of conditional appearance on the contention that it was bad and reliance was laid by the defendant on *Bowler* v. *John Mowlem & Co. Ltd.*(1)

Held: as in the indorsement of the writ no capacity to sue was shown, the objection succeeded.

Cases referred to:-

(1) *Bowler* v. *John Mowlem & Co. Ltd.* [1954] 1 W.L.R. 1445, C.A.

(2) *Ingall* v. *Moran* [1944] K.B. 160.

[**Editorial Note:** See *Govindasamy Pillay & Sons Ltd.* v. *Lok Seng Chai & Ors.* [1961] M.L.J. where this point was raised for consideration.]

CIVIL SUIT.

Brijnandan Singh Bhar for the plaintiffs.

R. Rajasingam for the defendant.

Chang Min Tat J.: In this running-down action, the plaintiffs describing themselves in the title to the writ as the administrators of the estate of the deceased victim of the running-down, claimed general and special damages suffered by the estate of the deceased and by his dependants who were in the indorsement named as Leila Bevi the widow and two infant sons. There was no description in the indorsement of the plaintiffs as such administrators, and there was no averment that the grant of letters of administration, if any, to the plaintiffs had been extracted.

Objection is now taken to the writ after entry of conditional appearance on the contention that it is bad. Reliance is laid by learned counsel for the defendant on *Bowler* v. *John Mowlem & Co. Ltd.*(1)

I think that case firstly repeats the proposition that until the grant of letters of administration has been extracted the administrators are not clothed with a capacity to sue, see *inter alia*, *Ingall* v. *Moran*(2) and secondly re-establishes that a widow can sue in her personal rights. In *Bowler's* case, the fact that the widow was the person suing saved the writ from being struck out.

In this particular case, it was not the widow suing. The writ was taken out by two persons purporting to be administrators and described as such in the title to the writ but there is absent from the indorsement any averment that they had been granted the letters of administration or that they had before the issue of the writ extracted the grant, since even if they had obtained and extracted the grant a short time after the issue of the writ, however short it was, it did not relate back. Consequently in the indorsement of the writ, no capacity to sue was shown.

The objection succeeds. There must be an order setting aside the writ and all subsequent proceedings. The plaintiffs must unfortunately pay the costs.

Order accordingly.

Solicitors: *Triptipal Singh & Co.; R. Rajasingam & Co.*

DAMODARAN v. VASUDEVA

[O.C.J. (Syed Agil Barakbah J.) December 20, 1973]
[Alor Star — Originating Motion No. 38 of 1973]

Land Law — Caveats — Private caveats — National Land Code, ss. 323-327 and 329.

The question before the court was whether it was proper for two private caveats to be issued at the instance of the same applicant on the same land and on precisely the same grounds under the National Land Code.

Held: construing the relevant provisions of the Land Code as a whole, the only natural and logical construction that can be given by way of analogy is that they do not envisage the issue of a caveat when one is still in existence and the more so, on the same grounds.

Function of a caveat explained.

Cases referred to:-

(1) *In re Hitchcock* (1900) 17 W.N. (N.S.W.) 62, 63.

(2) *Lim Kiat Moy* v. *Hamzah* [1966] 2 M.L.J. 175 at p. 176.

(3) *K.I. Muhiudeen Rawther* v. *K.E.P. Abdul Kassim & Ors.* [1959] M.L.J. 257.

ORIGINATING MOTION.

Peter Mooney for the applicant.

K. Vijayanathan for the respondent.

Syed Agil Barakbah J.: This is an application by notice of motion at the instance of the applicant for an order that: —

(1) the caveat of October 1973, over the lands in the Mukim of Sungei Pasir, District of Kuala Muda, Sungei Patani, held under Kedah Grants 16830, 16831, 16832, 16833 and 31020 be removed;

(2) the respondent be restrained from applying for a caveat upon the said grants on the same ground as relied on in the application on August 20 and October 1, 1973; and

(3) costs be taxed and paid by the respondent to the applicant.

The applicant by affidavit claims to be the registered proprietor of the lands described above. On August 20, 1973, the respondent made an application for entry of a private caveat to the Collector of Land Revenue, Kuala Muda, accompanied by a statutory declaration that he (the respondent) was the "co-unregistered owner" of the said land. Notice of the entry of the caveat was duly served by the collector on the applicant on August 21, 1973. Subsequently on August 29, 1973, the applicant applied to the collector for the removal of the caveat under section 326 of the National Land Code. Pursuant to the application on September 7, 1973, the collector issued and served notice of intended removal in Form 19C of the